



Federal Communications Commission
Washington, D.C. 20554

January 31, 2007

DA 07-496

Released: February 1, 2007

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Re: Station W68DD, Traverse City, MI, ID No.57380
File No. BPTTL-20000327AAX, et al.

Dear Counsel:

This letter is in response to the petitions for reconsideration of our decisions dismissing 114 displacement applications for low power television stations filed by MS Communications, LLC (MS).¹ For the reasons stated below, we deny the petitions for reconsideration and affirm our dismissal of the displacement applications.

In its applications, MS laid out three criteria in choosing new channels. First, MS sought locations where there would be no unmanageable interference constraints on the channel and location chosen. Second, MS considered locations which would result in a market size of greater than 40,000 households, which it considered the minimal size for "economic viability." Third, MS sought to allow for other displacements suffered by the same enterprise. Presumably, the third criterion was meant to allow for other displacements of stations licensed to MS. In our previous decisions dismissing the applications, we found that MS had failed to meet the requirement that its displacement application specify a location in the same area as its displaced facility. We found that MS's failure to consider sites within 40 km of its displaced sites and its decision to only consider sites with more than 40,000 households were contrary to the rules governing displacement applications. For those reasons, we dismissed the applications.

In its petitions for reconsideration, MS argues that: (1) the rules do not contain a geographic restriction with respect to Channel 52-69 licensees seeking to relocate to the core spectrum; (2)

¹ A complete list of the stations and applications affected is attached as Exhibit A. MS filed multiple petitions for reconsideration, all of which recited similar facts and relied on the same arguments. In the interest of administrative efficiency, we are consolidating all of the listed proceedings here.

the Commission must take sustainability into account in reviewing displacement applications; (3) established policy governing technical modifications based on a showing of need should not be applied to MS; (4) MS should not be penalized for attempting to comply with our Rules; and (5) good cause exists for granting MS's requests.

First, MS argues that our Rules permit a licensee to file a displacement application either to avoid interference or to continue to serve its protected service area. Under MS's argument, a party filing a displacement application to avoid interference does not have any additional obligation to continue serving its protected service area. However, such a conclusion would not only be at odds with the Commission's previous requirements governing LPTV stations seeking modifications, but also would permit a displaced station to move virtually anywhere in the country. In its previous decisions, the Commission has made clear that LPTV stations seeking to move to a new location must still seek to serve the same area² and it has not eliminated those requirements. Contrary to MS's arguments, there is no evidence that the Commission contemplated eliminating the service area requirement with respect to displaced stations or to any other LPTV stations. Therefore, we find that MS was required to comply with the requirement that its stations serve their protected area following the proposed modifications.

Second, MS claims that we must take the economic sustainability of its stations into account when deciding whether to authorize its move and also claims its systems will not be sustainable except in markets with at least 40,000 households. In bolstering its claims, MS relies on our decisions authorizing the use of satellite stations, our one-to-a-market rule, and decisions permitting the use of spectrum for other than its original purpose. What MS overlooks is that the decisions on which it relies still required that the same area be served. For example, a basic premise of our decisions authorizing the use of satellite stations is that granting the satellite authorization will preserve a media voice in an underserved market.³ The satellite station policy does not contemplate moving the station to another, potentially more profitable market. Also, even though the Commission does take economic considerations of licensees into account in certain contexts, it does not guarantee a licensee economic success, nor will it abrogate all of its rules and policies so that a licensee may, at will, move to a market that might be more profitable than the one it originally, voluntarily, applied to serve.

MS states that it should not be required to demonstrate a showing of need to justify its technical modifications. In support of its position, MS lists a group of modification applications that it claims offered justifications substantially similar to those it offered in support of its requested moves. However, MS does not discuss how its applications are similar to those cited and admits that the information in its own applications may have been "presented in a somewhat more summary fashion" than the applications cited. MS then claims that it offered to provide papers to back up its claimed justification for its modifications, but does not present those papers. An

² See, e.g., *Low Power Television and Television Translator Service*, 2 FCC Rcd 1278 (1987); *Advanced Television Systems, Sixth Report and Order*, 12 FCC Rcd 14588 (1997).

³ *Television Satellite Stations*, 6 FCC Rcd 4212, 4215 (1991).

applicant has an obligation to make sure that its application is complete in itself at the time it is filed. Otherwise, the application is subject to dismissal. This is especially true if an applicant is seeking a waiver or an exception to our rules. At this point, MS cannot rely on a broad generalization that its applications were somehow similar to others that were granted in other proceedings and expect to be given relief. Furthermore, MS cannot expect relief because it claims that it has in its possession documentation that will justify its request for an exception to be made to our rules. If MS wanted to make a case that it should be exempted from the fundamental requirement of a showing of need, it should have presented all evidence in support of its position as part of its application. It did not do so at the time it filed its applications and has not done so now.

MS next claims it should not be penalized for its alleged attempt to comply with our rules. MS claims that its interpretation of the Commission's Rules to permit it to abandon its stations' service areas is reasonable and, therefore, its applications should not have been dismissed. MS makes this claim even though that interpretation flies in the face of the Commission's longstanding requirement that stations preserve service in their protected area. As discussed above, MS's position is not a reasonable one and, in spite of MS's claims to the contrary, it was not unfairly penalized when its applications were dismissed.

Finally, MS claims that good cause exists for granting its request, by which it means good cause exists for a waiver. An applicant for a waiver faces a heavy burden of persuasion, although the Commission must give a "hard look" to meritorious waiver requests and may grant such requests where the waiver will not undermine the policy of the general rule and where public interest considerations require the waiver.⁴ MS has not demonstrated how granting it a waiver from serving its designated service area would serve the purpose of our rules or how it would serve the interest of any party but MS. Indeed, grant of the requested waiver would undermine the general policy of the rules governing LPTV stations to preserve existing service.

ACCORDINGLY, IT IS ORDERED, That the petitions for reconsideration of our decision to dismiss the displacement applications filed by MS Communications, LLC and listed on Exhibit A hereto ARE DENIED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁴ *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656 (D.C. Cir. 1984).

EXHIBIT A

Call Sign	City	State	Prefix	ARN
W62CQ	GREEN BAY	WI	BMP TTL	20000327ABC
K55GS	DES MOINES	IA	BMP TTL	20000425ABC
W14BW	TUPELO	MS	BMP TTL	20000515ACA
W36BS	COLUMBIA	MO	BMP TTL	20000515ACC
K69HT	EVANSVILLE	IN	BMP TTL	20000526ABS
W66CL	PORTLAND	ME	BMP TTL	20000526ABU
W61CO	COLUMBIA	MO	BMP TTL	20000526ABV
W58CM	PORTLAND	ME	BMP TTL	20000526ABW
K55HL	EVANSVILLE	IN	BMP TTL	20000614ACN
W20BS	HATTIESBURG	MS	BMP TTL	20000630ADP
W26BR	GULFPORT	MS	BMP TTL	20000711AAO
W36BY	MCCOMB	MS	BMP TTL	20001031ABW
K59FB	FORREST CITY	AR	BPTTL	20010926ABR
K46EM	JONESBURO	AR	BPTTL	20010926ABS
W52CZ	BELLE MEADE	TN	BPTTL	20010926ABT
W56DA	DECATUR	AL	BPTTL	20010927AAX
W69DB	COLUMBIA	TN	BPTTL	20010927ABG
W16BI	KNOXVILLE	TN	BPTTL	20010928ABZ
W24BT	LEXINGTON	KY	BPTTL	20011010AAH
W31BU	GREENVILLE	SC	BPTTL	20011018AFO
W69ED	HUNTINGTON	WV	BPTTL	20011019AAW
W26BK	CHARLESTON	WV	BPTTL	20011022AAO
W65DE	NEW ORLEANS	LA	BPTTL	20011106AAN
K57GK	LAFAYETTE	LA	BPTTL	20011108AAF
K38EG	LAKE CHARLES	LA	BPTTL	20011113ACJ
K55GT	BEAUMONT	TX	BPTTL	20011116ABK
W48BY	BEAVER DAM	WI	BPTTL	20011119AAV
W23BL	OSHKOSH	WI	BPTTL	20011120ABF
W34BZ	BEAVER DAM	WI	BPTTL	20011120ABG
W48CC	BIG RAPIDS	MI	BPTTL	20011206AAW
W18CB	BIG RAPIDS	MI	BPTTL	20011206ABA
W67DN	MUSKEGON	MI	BPTTL	20011213ABJ
W21BS	BATTLE CREEK	MI	BPTTL	20011220ABD
W24CG	JACKSON	MI	BPTTL	20011227AAW
W48BZ	ANN ARBOR	MI	BPTTL	20011231AAC
W50CA	PONTIAC	MI	BPTTL	20020107AAH
W52CB	BATAVIA	NY	BPTTL	20020108AAY
W36CE	FT. WAYNE	IN	BPTTL	20020111AAT
W50CD	BOWLING GREEN	OH	BPTTL	20020130ABU

W52CO	DEFIANCE	OH	BPTTL	20020206AAO
W55CH	LIMA	OH	BPTTL	20020211ABA
W59DC	TOLEDO	OH	BPTTL	20020212AAH
W66CX	JANESVILLE	WI	BPTTL	20020221AAK
W61CS	CLEVELAND	OH	BPTVL	20020226ABR
W58CN	SHEBOYGAN	WI	BPTTL	20020227ACU
W56DF	KENOSHA	WI	BPTTL	20020228ACL
W52CP	ROCKFORD	IL	BPTTL	20020306AAB
W65DJ	ERIE	PA	BPTTL	20020307ABH
W56DI	EAU CLAIRE	WI	BPTTL	20020307ABO
W63CH	AKRON	OH	BPTTL	20020307ABQ
W58CO	MADISON	WI	BPTTL	20020307ABS
W66CY	MUNCIE	IN	BPTTL	20020313AAR
W64CK	SPRINGFIELD/DAYTON	OH	BPTTL	20020315AAL
W62CR	COLUMBUS	OH	BPTTL	20020315AAM
W57CP	KOKOMO	IN	BPTTL	20020319ABI
W55CL	INDIANAPOLIS	IN	BPTTL	20020321AAW
W53BN	YOUNGSTOWN	OH	BPTTL	20020327ABI
W39CB	PITTSBURGH	PA	BPTTL	20020404AAY
W65CZ	JOLIET	IL	BPTTL	20020423ABE
K52FC	WICHITA	KS	BPTTL	20020429ACP
K67GR	ST. LOUIS	MO	BPTTL	20020429ACQ
W36CD	BUFFALO	NY	BPTTL	20020502AAZ
K31ED	OMAHA	NE	BPTTL	20020503ABI
W60CI	LA CROSSE	WI	BPTTL	20020508AAO
K53FM	BELTON	MO	BPTTL	20020509AAW
W40BC	CEDAR RAPIDS	IA	BPTTL	20020509AAY
W24BV	ROCK ISLAND	IL	BPTTL	20020513AAU
K59FW	REDDING	CA	BPTTL	20020523AAQ
W30BO	JACKSONVILLE	FL	BPTTL	20020523AAU
K69HO	MONROE	LA	BPTTL	20020605ABD
K66EX	SHREVEPORT	LA	BPTTL	20020606AAH
K57FV	SPRINGFIELD	MO	BPTTL	20020621AAA
W69DO	MACON	GA	BPTTL	20020627AAM
W47BX	CHARLESTON	SC	BPTTL	20020627AAN
K63GK	PORTLAND	OR	BPTTL	20020627AAR
K69IE	RENO	NV	BPTTL	20020701ABK
W36BT	COLUMBUS	GA	BPTTL	20020723ABI
W45BL	MONTGOMERY	AL	BPTTL	20020723ABK
W62CK	BIRMINGHAM	AL	BPTTL	20020725AAX
K63FX	TEXARKANA	TX	BPTTL	20020725ABB
K59FJ	SHERMAN	TX	BPTTL	20020726AAQ
W54CG	MANCHESTER	NH	BPTTL	20020729ABS

W66CG	CHATTANOOGA	TN	BPTTL	20020801ABE
K61FP	CONWAY	AR	BPTTL	20020805AAW
W41BV	GREENVILLE	MS	BPTTL	20020806ABC
K65GP	CARBONDALE	IL	BPTTL	20020806ABD
K57HB	SEATTLE	WA	BPTTL	20020807AAR
K58FD	TERRE HAUTE	IN	BPTTL	20020807AAS
K50DW	CORPUS CHRISTI	TX	BPTTL	20020808ADS
W46CE	SENATOBIA	MS	BPTTL	20020808ADT
W57CQ	LAFAYETTE	IN	BPTTL	20020814ABB
K43EI	LONGVIEW	TX	BPTTL	20020814ABE
K27FF	LITTLE ROCK	AR	BPTTL	20020814ABF
K65GA	TOPEKA	KS	BPTTL	20020815AAM
K57GF	GARLAND	TX	BPTTL	20020816AAR
K27FX	SACRAMENTO	CA	BPTTL	20020816AAS
W64BZ	PARAGOULD	AR	BPTTL	20020819ABO
K53FC	ST. JOSEPH	MO	BPTTL	20020819ABP
K67GH	SIoux FALLS	SD	BPTTL	20020819ABQ
K55HU	FORT SMITH	AR	BPTTL	20020819ABR
W54BU	HUNTSVILLE	AL	BPTTL	20020819ABS
K23DZ	BATON ROUGE	LA	BPTTL	20020822ABQ
W34BU	ATLANTA	GA	BPTTL	20020822ABR
K45EE	COUNCIL BLUFFS	IA	BPTTL	20020828AAW
K36DR	LITTLE ROCK	AR	BPTTL	20020829ABS
K53FB	GREENVILLE	MS	BPTTL	20020905ABF
W46CK	PENSACOLA	FL	BPTTL	20020909ABE
W25BY	MEMPHIS	TN	BPTTL	20020925ABY
W38BY	MEMPHIS	TN	BPTTL	20020927ABM
W08DM	GAINESVILLE	FL	BPTTL	20021003ABC
K60GE	SAN ANTONIO	TX	BPTTL	20021007ACB
K22ES	FAYETTEVILLE	AR	BPTTL	20021009AAW
K30EC	OKLAHOMA CITY	OK	BPTTL	20021009AAY
W49BS	CHICAGO	IL	BPTTL	20021121AAZ
W62CQ	GREEN BAY	WI	BMP TTL	20000327ABC
K55GS	DES MOINES	IA	BMP TTL	20000425ABC